



Federal Highway Administration

Federal Transit Administration

Notice of Recent Statutory Changes and Change of Date for the Annual Index for Inflation of the Monetary Thresholds for the Limited Federal Financial Assistance Categorical Exclusions

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces recent statutory changes affecting the monetary thresholds for the limited Federal financial assistance categorical exclusions (CE) established by FHWA and FTA in regulations. This notice also announces an amendment to the timeframe that FHWA and FTA will use for the annual index for inflation of the monetary thresholds for those CEs, from January (calendar year) to October (fiscal year) of each year.

DATES: FHWA and FTA incorporated the annual adjustment for inflation of the monetary thresholds for the limited Federal financial assistance CEs on October 1, 2022, and will incorporate future annual adjustments in October of subsequent years.

FOR FURTHER INFORMATION CONTACT: For FHWA: Diane Mobley, Senior Attorney-Advisor, Office of the Chief Counsel, (202) 366-1366, or Robert Washington, Environmental Protection Specialist, Office of Project Development and Environmental Review, (202) 366-4651. For FTA: Mark Montgomery, Attorney-Advisor, Office of Chief Counsel, (202) 366-1017, or Dee Phan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366-1799. FHWA and FTA are located at 1200 New Jersey Avenue S.E., Washington, DC. 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112–141, 126 Stat. 405, signed into law on July 6, 2012, contained new requirements that FHWA and FTA (hereafter referred to as “the Agencies”) must meet in complying with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). Section 1317 required the Agencies to promulgate regulations designating as a CE any project that receives less than \$5,000,000 of Federal funds or with a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. Accordingly, the Agencies established limited Federal financial assistance CEs for FHWA at 23 CFR 771.117(c)(23) and for FTA at 23 CFR 771.118(c)(13), which were published in a final rule in the Federal Register on January 13, 2014 (79 FR 2107).

Subsequently, the Fixing America’s Surface Transportation (FAST) Act, Public Law 114-94, 129 Stat. 1312, enacted on December 4, 2015, amended section 1317 of MAP-21 by inserting “(as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the U.S. Department of Labor)” after “\$5,000,000” in paragraph (1)(A) and after “\$30,000,000” in paragraph (1)(B) of the CE for projects receiving limited Federal financial assistance. In a subsequent final rule, published in the Federal Register on May 31, 2016 (81 FR 34271), the Agencies amended the limited Federal financial assistance CEs to incorporate the adjustment for inflation requirement created by the FAST Act. The Agencies included a reference to their respective Websites (www.fhwa.dot.gov and www.fta.dot.gov) in the CE language to provide a source for locating the consumer price index (CPI), as adjusted annually. At that time, the Agencies determined that the thresholds for the CEs would be updated annually in January of subsequent years.

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL),

Public Law 117–58, 135 Stat. 429, which amended the thresholds for the CEs for projects receiving limited Federal financial assistance established by section 1317 of MAP-21. Section 11317 of BIL replaced “5,000,000” with “6,000,000” in paragraph (1)(A) and “30,000,000” with “35,000,000” in paragraph (1)(B). While the Agencies intend to update 23 CFR 771.117(c)(23) and 23 CFR 771.118(c)(13) to reflect these new thresholds in a subsequent rulemaking, the new thresholds are self-executing as of the effective date of BIL, which was October 1, 2021. The Agencies determined that the CPI adjustment required by the FAST Act would occur one year from that effective date. Notice is hereby given that the Agencies incorporated the adjustment for inflation on October 1, 2022, for the period from June 1, 2021, to May 31, 2022, and the Agencies will incorporate future annual adjustments in October of each subsequent year for the preceding period from June 1 to May 31. The Agencies plan to do so by providing information about the annual adjustment on their respective Websites (https://www.environment.fhwa.dot.gov/Legislation/authorizations/bil/bil_guidance.aspx and <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/guidance-implementation-ftas-categorical-exclusions>) and will no longer publish a Federal Register notice every year.

Authority: Sec. 1317, Pub. L. 112–141, 126 Stat. 405, as amended by section 1314, Pub. L. 114–94, 129 Stat. 1312; section 11317, Pub. L. 117-58, 135 Stat. 543.

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